

ORIGINAL

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 BENJAMIN CASE, ELIZABETH CATLIN,
5 JENNIFER KLEIN and MARK KUSHNEIR,

6 PLAINTIFFS,

7 -against-

8 Case No.:
9 1:14-cv-09148-AT

10 THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT
11 ("NYPD"), CHIEF OF DEPARTMENT JOSEPH ESPOSITO,
12 NYPD DEPUTY CHIEF BRIAN MCCARTHY, NYPD LIEUTENANT
13 DAVID GROHT, NYPD SERGEANT LAWRENCE PAPOLA, SHIELD
14 NO. 03646, NYPD OFFICER BENJAMIN ALMONTE, SHIELD
15 NO. 29182, NYPD OFFICER DANIEL CONFORTI, SHIELD
16 NO. 26403, NYPD OFFICER FIRST NAME UNKNOWN,
17 ("FNU") DOWNES, SHIELD NO. UNKNOWN, NYPD OFFICER
18 DMITRY TVERDOKHLEB, SHIELD NO. 27018 and NYPD
19 OFFICER MICHAEL MALDONADO, SHIELD 23573,

20 DEFENDANTS.

21 -----X

22 DATE: August 18, 2017

23 TIME: 9:45 A.M.

24

25 DEPOSITION of the Plaintiff, JENNIFER

26 KLEIN, taken by the Defendants, pursuant to a Court Order
27 and to the Federal Rules of Civil Procedure, held at the
28 offices of The New York Law Department, 100 Church Street,
29 New York, New York 10007, before Gary Merola, a Notary
30 Public of the State of New York.

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1 A P P E A R A N C E S:

2

3 GIDEON ORTON OLIVER, ESQ.
Attorney for the Plaintiffs
4 BENJAMIN CASE, ELIZABETH CATLIN,
JENNIFER KLEIN and MARK KUSHNEIR
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7

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14 OFFICER DMITRY TVERDOKHLEB, SHIELD NO. 27018 and
NYPD OFFICER MICHAEL MALDONADO, SHIELD 23573
15 100 Church Street
New York, New York 10007
16 BY: AMY ROBINSON, ESQ.
File #: 2015-009624
17 Control #: 166886

18

ALSO PRESENT:

19

MICHAEL DECKER

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1 F E D E R A L S T I P U L A T I O N S

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4 IT IS HEREBY STIPULATED AND AGREED by and between
5 the counsel for the respective parties herein that the
6 sealing, filing and certification of the within deposition
7 be waived; that the original of the deposition may be
8 signed and sworn to by the witness before anyone authorized
9 to administer an oath, with the same effect as if signed
10 before a Judge of the Court; that an unsigned copy of the
11 deposition may be used with the same force and effect as if
12 signed by the witness, 30 days after service of the
13 original & 1 copy of same upon counsel for the witness.

14

15 IT IS FURTHER STIPULATED AND AGREED that all
16 objections except as to form, are reserved to the time of
17 trial.

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J. KLEIN

1 you from testifying honestly and truthfully?

2 A. [REDACTED]

3 [REDACTED]

4 Q. Have you ever testified as a witness before?

5 A. Yes.

6 Q. How many times have you testified as a witness
7 before?

8 A. Twice.

9 Q. Could you tell me what were the circumstances in
10 those two times in which you testified?

11 A. The first time I testified was as a plaintiff in
12 a landlord/tenant case in New Haven.

13 The second time I testified was as a plaintiff in
14 a wrongful death lawsuit in Miami, Florida.

15 Q. Have you had any conversations with anyone about
16 coming to your deposition today other than your attorney,
17 Mr. Oliver?

18 A. Yes.

19 Q. Who have you spoken to besides Mr. Decker also?

20 A. My husband.

21 Q. That is Mr. Berger, correct?

22 A. Yes.

23 Q. What was your address on the date of the
24 incident?

25 A. [REDACTED]

J. KLEIN

1 A Standing in a crowd of people.

2 Q. How many people were in that crowd,
3 approximately?

4 A. Over 200.

5 Q. What did you see yourself doing after you saw
6 yourself standing in the crowd?

7 MR. OLIVER: Objection, you can answer.

8 A. First I should say the videos are constantly
9 showing different parts of people in the area. So, there
10 isn't a continuous viewing of either me or the spot where I
11 was. I think that's important to note.

12 Q. Understood.

13 A. So, I had marched down the sidewalk of Pine
14 Street in an attempt to turn with the march right onto
15 Nassau Street. There was a police blockade and there was
16 both a double line of police officers and a barricade and
17 this began to create a funnel that forced people into the
18 intersection.

19 Because of that funneling effect, I ended up in
20 the intersection because the police had blocked off the
21 sidewalk. I was standing in the intersection by 8:30 A.M.

22 Q. Although I understand you are not the focus of
23 the video, when you saw yourself on the video again what do
24 you recall yourself doing?

25 MR. OLIVER: Objection, you can answer.

J. KLEIN

1 A. At what time?

2 Q. At any time after 8:30.

3 A. So, for a while I was standing. Of course it was
4 my intention to participate in the march as I have done
5 throughout my life as an engaged citizen, as committed
6 citizen, as somebody who has First Amendment rights.

7 I continued along the march on the sidewalk. The
8 sidewalk was blocked by the police and it really wasn't
9 clear to me at first why that was the case.

10 There were two lines of police. There were
11 police who began to surround the intersection. There were
12 also police vans there, a police van behind the
13 intersection on Nassau Street.

14 So, for a while I was standing waiting to
15 continue with the march to be able to participate in a
16 rally which I came there to do and then there was a brief
17 moment around about 8:39 when I sat down with a group of
18 people to try and hear what was being said.

19 Around 8:45 or so there had now been almost three
20 rows of officers blocking Nassau Street. An officer got up
21 on some kind of barrier that was on the sidewalk with a
22 megaphone and he made the announcement that people were
23 blocking the street, they were blocking traffic. If they
24 did not move they would be arrested.

25 He immediately made a second announcement. No

J. KLEIN

1 police did anything other than continue to block in the
2 intersection.

3 A third announcement was made immediately. There
4 was no time between the announcement between the third and
5 fourth announcement, I stood up. The people around me
6 stood up.

7 So, from that point I was standing up there was
8 nowhere to go. Between 8:45 and the next ten minutes
9 police began to push in through the barricade. A huge mass
10 of police.

11 As the police pulled into the middle of Nassau
12 Street, the rest of the people who were arrested, people
13 who were standing up. The police began to move across Pine
14 Street to form a line across Pine Street.

15 The police also came behind the crowd on Pine
16 Street. So, I was standing and I know that an announcement
17 was made, a fifth or sixth time.

18 By 8:55 the police, I believe had lined both
19 sides of the intersection of Pine Street and they were
20 pushing in from Nassau Street.

21 At a certain point I was being directly pushed by
22 a line of police. As of 8:58 I was still standing. There
23 was nowhere for me to go because then I was surrounded by
24 kind of a semicircle of police officers, and a line of
25 police officers on Pine Street.

J. KLEIN

1 So, around 8:59 I was concerned that there was no
2 way that I could continue to participate in the march which
3 was I had come there to do and to participate in the rally.

4 That the police were simply trying to push me out
5 of there and shut down any kind of march or any kind of
6 rally whatsoever.

7 Q. When you mentioned earlier about the barricades,
8 what were you referring to?

9 A. Metal fence barricades that were lined up across
10 Nassau Street. There was one also on Pine Street. There
11 were police vans in the road and somewhere between 8:55 and
12 9:00 there were police on horses on Nassau Street. So, the
13 police on horses definitely blocked the road.

14 Q. When did you first hear about Occupy Wall Street?

15 A. A couple of days after it began. I read about it
16 in the press.

17 Q. What was the first Occupy Wall Street event that
18 you attended?

19 A. I went there with my family on or around October
20 10, 2011. I visited Zuccotti Park with my family to see
21 what the occupation looked like and to observe the site.

22 Q. When you say occupation, how do you define
23 occupation?

24 A. I define it as a site that citizens had sat down
25 in in order to publicly express a set of grievances and

J. KLEIN

1 rights.

2 Q. Just so I understand.

3 You're defining occupation as sit in to
4 communicate grievances and rights; is that correct?

5 A. I did not use sit in.

6 Q. You said sat down.

7 A. I define it as a space where people take
8 collective action through physically occupying it in order
9 to express grievances or assert rights.

10 Q. What was the second event that you attended
11 Occupied Wall Street related?

12 A. I went there with a group of my undergraduate
13 students.

14 Q. What date was that?

15 A. I'm not sure.

16 Q. Sometime prior to this incident?

17 A. Yes.

18 Q. Where did you go?

19 A. We went to Zuccotti Park.

20 Q. What did you do when you got there?

21 A. We observe the activities of people who were
22 there, we looked at some of the literature and we listened
23 to a speaker.

24 Q. Did you do any occupying at that time?

25 MR. OLIVER: Objection, you can answer.

J. KLEIN

1 Q. Sure.

2 Have you ever organized any Occupy Wall Street
3 activities?

4 A. No.

5 Q. Have you held any jobs or positions in Occupy
6 Wall Street?

7 A. No.

8 Q. Have you ever attended any Occupy Wall Street
9 general assembly meetings?

10 A. I may have observed one when I was there, but I
11 was not a participant.

12 Q. We are going to turn now to the date of the
13 incident, November 17, 2011.

14 How would you characterize the day's event on the
15 date of the incident?

16 MR. OLIVER: Objection, you can answer.

17 A. Can you be more precise?

18 Q. Yes. Was it a demonstration?

19 A. Yes.

20 Q. And what was the goal of the demonstration?

21 MR. OLIVER: Objection, you can answer.

22 A. The goal of the demonstration that I came there
23 to attend was to first of all express dissent with the
24 order to dismantled the occupation site at Zuccotti Park,
25 but then to march down Pine Street to the stock exchange

J. KLEIN

1 and to have a demonstration in front of the stock exchange
2 to express additional agreement with people that favored
3 the financial sector.

4 Q. Are you familiar with the phrase International
5 Day of Action?

6 A. No.

7 Q. Were you familiar with November 17, 2011 as being
8 referred to as shutdown Wall Street?

9 A. I didn't hear it as that, but what I came there
10 for was to do a protest in front of the stock exchange.

11 Q. Did you intend to shut down this stock exchange?

12 A. We thought that a rally or I should say that I
13 thought that a rally in front of the stock exchange could
14 temporarily block some access to it perhaps.

15 Q. What was your purpose in blocking some access to
16 the stock exchange?

17 MR. OLIVER: Objection to the
18 mischaracterization.

19 You can answer.

20 A. As I indicated my purpose in taking part in a
21 march or a rally was to visually demonstrate disagreement
22 with policies that favored the financial sector.

23 Q. Would you characterize your participation on
24 November 17, 2011 as civil disobedience?

25 A. My participation was First Amendment assembly

J. KLEIN

1 not move forward to fulfill this march, but that the police
2 were shutting down entirely what should be a basic right to
3 a rally and a demonstration.

4 They were clearly not going to let it happen.
5 So, once I was surrounded by police and there was nowhere
6 to go I sat down on the street.

7 Q. So, is it your testimony that you were not
8 engaged on what you would call civil disobedience on the
9 date of the incident?

10 MR. OLIVER: Objection.

11 You can answer again.

12 A. I feel that I was backed into a situation that
13 was not my intention. And that the only way that I could
14 express and defend my rights, First Amendment rights was
15 that I sat down. But only about two minutes before I was
16 arrested.

17 I had nowhere else to go. As you can see I was
18 standing and there was no way out.

19 Q. Did you see any traffic being blocked by the
20 crowd sitting in the intersection?

21 MR. OLIVER: Objection.

22 You can answer it.

23 A. I think that is hard to determine because there
24 was a very heavy police presence that had put up barricades
25 before I ever got to the intersection. There were also

J. KLEIN

1 police vehicles that were parked in the intersection.

2 There was a police van that was across Nassau
3 Street, there were police barricades, there were police
4 lines that were two people thick and then later three
5 people thick.

6 Q. It seems to me that is quite difficult to parse.

7 A. As I said I came down as part of a march on the
8 sidewalk of Pine Street, turned and that was blocked.
9 There was a line across Nassau Street and there were police
10 vehicles in the street. I believe that the police created
11 a situation that funneled people into the intersection.

12 Q. Did you at any time see a line of trucks in the
13 intersection trying to make their way through?

14 A. There was a -- yes, there was, I think an office
15 supply truck, but the police had already created a
16 situation of pushing over 200 people into the street.

17 Q. How did you hear about the event that was going
18 to take place on the date of the incident?

19 A. Do you mean beforehand?

20 Q. Yes, ma'am.

21 A. I'm not sure.

22 Q. How did you get to the event that day?

23 A. One of my graduate students drove from New Haven
24 to New York and then we took the subway.

25 Q. What is the name of that student?

J. KLEIN

1 Q. Approximately what time did you arrive at
2 Zuccotti Park on the day of the incident?

3 A. I don't know.

4 Q. What time did you arrive at Pine and Nassau?

5 A. Maybe around 8:25 or 8:30.

6 Q. Did you leave Zuccotti Park upon immediately
7 arriving there to march or walk to the Wall Street area?

8 A. No.

9 Q. How long were you in Zuccotti Park before you
10 went into the Wall Street area?

11 A. I was not in Zuccotti Park.

12 Q. Where were you?

13 A. I was on a street nearby.

14 Q. How long were you on the street nearby Zuccotti
15 Park before you left for the Wall Street area?

16 A. I don't know. People were gathering for a march.

17 Q. Could it be two hours?

18 A. No.

19 Q. One hour?

20 A. I don't know.

21 Q. On the date of the incident, did you have any
22 props with you; any signs, banners, whistles, anything of
23 that nature?

24 A. No.

25 Q. Prior to your arrest, did you have any

J. KLEIN

1 A. No.

2 Q. Did you occupy according to your own definition
3 of occupy the area of Pine and Nassau street on the day of
4 the incident?

5 MR. OLIVER: Objection.

6 You can answer.

7 A. When the police blocked me from continuing in the
8 march and blocked the other people using barricades and
9 extremely heavily police presence, I was waiting there
10 hoping to continue with the march.

11 Q. Do you remember stating in an e-mail to Barry
12 Eidlin that we in quotes, occupied at Nassau and Pine
13 Street about a block from the New York Stock Exchange?

14 A. I meant that in a different way. Than the people
15 who were actually camped out and saw themselves as having
16 taken over Zuccotti Park.

17 I meant that in the sense of there we were in the
18 intersection, having been funneled into there by the police
19 presence, which had blocked the roads and were waiting for
20 our opportunity to proceed with the march and the
21 demonstration.

22 So, we were occupying the street in the sense
23 that I was not leaving. I was standing there and I was
24 waiting for my opportunity to continue.

25 Q. So, when you're referring to occupying in your

J. KLEIN

1 arrest.

2 Q. So, when you were arrested, you were in a seated
3 position?

4 A. Yes.

5 Q. Were you locked arms with people on either side
6 of you?

7 A. No.

8 Q. Were you at any time locked arms with people on
9 either side of you?

10 A. No. Nor did I in any way resist arrest. When I
11 was taken into custody, I was fully compliant.

12 Q. You had testified earlier about what you thought
13 might have been an office supply truck that you saw. In
14 the area were there any other vehicles near that truck that
15 you remember seeing?

16 A. There was a van, but I don't remember what kind
17 of a van it was.

18 Q. How far away were you from the truck?

19 A. I was on the opposite side of the intersection.
20 However, there was a police van behind where I was on Pine
21 Street. Also again at the time of my arrest behind the
22 barricade on Nassau Street there was a row of police on
23 horses.

24 Q. How far would you say you were away from the
25 truck and the van that were in the intersection?

J. KLEIN

1 sector. Then I think it became sort of very much also
2 about freedom of assembly.

3 Q. Do you recall stating in an e-mail I quote, "I do
4 feel we sort of made a collective decision to defend public
5 streets and our rights to occupy them together"?

6 A. Yes.

7 Q. What did you mean by that?

8 A. Just what I said. That the original intention of
9 my participation in the march was very specifically about
10 protesting both the shutdown and the expulsion from
11 Zuccotti Park and the policies and practices regarding the
12 financial sector.

13 Once the police had barricaded the street, had
14 blocked people off, had begun to push us back, had made it
15 clear that they just wanted to shut down a basic rally and
16 protest all together and not allow me any rights whatsoever
17 to participate in it, then yes, it became very clear that
18 this was now about freedom of assembly and freedom of
19 speech. Because the police had created the situation that
20 was meant to push us out of the way entirely.

21 Q. So, would you say that you were occupying the
22 area of Pine and Nassau Streets?

23 MR. OLIVER: Objection.

24 You can answer.

25 A. I thought I already answered that question.

J. KLEIN

1 MR. OLIVER: You can answer the question
2 that she asked.

3 A. Insofar as I remained there, yes.

4 Q. In that e-mail you go on to further state and I
5 quote, "we just rather calmly and determinably decided we
6 should hold the line together?"

7 What did you mean by that?

8 A. I meant that the students who I was with and
9 myself felt that the police were simply going to push
10 everyone out of there and not allow any kind of rally to
11 take place.

12 I was literally being pushed by a line of police
13 and with nowhere to go. I was now there and what was kind
14 of left to try to hold the line in hopes that some kind of
15 march or rally could somehow be realized.

16 Q. When you say we decided to hold the line
17 together, does that mean that you had decided to get
18 arrested?

19 A. It means that I continued to stand there as the
20 police pushed me back. The point that I sat down was
21 literally only two, three minutes before the arrest
22 occurred.

23 Q. Did you decide you were going to get arrested?

24 MR. OLIVER: Objection, you can answer.

25 A. I decided that in order to defend our ability to

J. KLEIN

1 A. Yes, I did.

2 Q. How many orders to disburse do you think that you
3 heard before you were arrested?

4 MR. OLIVER: Objection.

5 You can answer.

6 A. I heard three orders to disburse, possibly four
7 and therefore I stood up. I was standing as the police
8 began to enclose this intersection. So, I heard five
9 orders to move off the street.

10 The order came in very quick succession. And
11 they came as the police were simultaneously enclosing the
12 intersection.

13 Q. You testified earlier that you saw an officer
14 standing on some object giving orders. Was he using a
15 bullhorn?

16 A. Yes. That's when he made it -- yeah.

17 Q. Would it surprise you to learn that that officer
18 had given some, had given orders to disburse some 15 times
19 before you were arrested with the bullhorn?

20 A. No. But while he was standing on that metal, I
21 don't know what that is.

22 Q. Artwork probably.

23 A. Barrier or something, square, that metal square
24 he gave four to five announcements. I was standing by that
25 time.

J. KLEIN

1 A. After two or three requests, they were loosened a
2 bit.

3 Q. Did an officer joke with you that all your
4 students should get an A from this experience?

5 A. That was after we were released after 11:00 p.m.
6 That was after the entire day spent in jail.

7 Q. Ms. Klein, did you receiver or sustain any
8 physical injuries as a result of your arrest?

9 A. Could you just qualify physical?

10 Q. Other than psychological.

11 A. No.

12 Q. So you didn't seek any medical treatment while
13 you were in custody?

14 A. No.

15 Q. And you didn't seek medical treatment after you
16 were released from custody?

17 A. No.

18 Q. Did you sustain any psychological injuries as a
19 result of your arrest?

20 MR. OLIVER: Objection.

21 You can answer.

22 A. Well, it was difficult being in a cell for an
23 opened ended amount of time. I didn't know when I was
24 being released. I wasn't released from the cell until 10
25 or 11 hours later. That was quite stressful.

J. KLEIN

1 I also was concerned about the fact that I was
2 not able to fulfill my professional commitment.

3 First of all, that I was not there to attend the
4 conference where I was supposed to comment on the work of
5 two-year scholars and then subsequently some of the days
6 when I had to return to New York to appear in court I
7 missed class time which means I was not there to fulfill my
8 obligations to the students.

9 Either in terms of teaching my class or meeting
10 with them as advised.

11 Q. Were there any other psychological injury that
12 you suffered as a result of your arrest?

13 A. In terms of psychological, how would you define
14 it?

15 Q. Emotional injuries.

16 Did you ever receive treatment for psychological
17 damages as a result of your arrest?

18 A. No.

19 Q. Other than what you testified to, are there any
20 other details of any emotional injury that you suffered as
21 a result of your arrest?

22 MR. OLIVER: Objection.

23 You can answer.

24 A. I had always been an engaged citizen. I have
25 always participated in marches and rallies in the town that

J. KLEIN

1 You can answer.

2 A. How does one measure --

3 Q. On a scale of one to ten, how severe?

4 MR. OLIVER: Objection.

5 You can answer.

6 A. I think it left me worried about the ability to
7 continue to participate as a citizen in public action
8 because it turns out you don't know what turn it will take.

9 I want my daughters to know that it is okay for
10 them to participate in public demonstrations and marches
11 and this really, this really causes a lot of anxiety which
12 is why I think the lawsuit is important. Because, I think
13 it's important for me to find a way to defend First
14 Amendment rights and not allow this kind of widening sphere
15 off of repression and potential fear tactics and damping to
16 be out there.

17 Q. Do you recall stating in an e-mail to Barry and
18 Julie on the day after the day of the incident and I quote,
19 "they kept us pinned for a couple of hours on the street
20 and then in jail all day. Fortunately we were, everyone
21 was in high spirits and unhurt."

22 Do you recall putting that in an e-mail?

23 A. Yes, I do. I don't think that precludes anxiety.
24 I don't think that precludes not knowing what is going to
25 happen. Especially as the hours wore on in which I was in

J. KLEIN

1 a cell. I had no idea that I would be kept in a cell until
2 very late at night.

3 Q. But you did write this e-mail the day after it
4 happened, correct?

5 A. I know that I wrote that e-mail.

6 Q. Do you know what you were ultimately charged
7 with?

8 A. I think I was charged with three counts.

9 Q. Do you know what they were?

10 A. I think it was blocking traffic, parading without
11 a permit and I think one of the charges might have been
12 disorderly conduct. But I'm not sure.

13 Q. And what was the disposition of your criminal
14 case, if you know?

15 A. Could you define that word for me?

16 Q. Did you accept an ACD in this case?

17 A. At first I did not. I felt that I had the right
18 to a trial. So, I did not want to simply give into the
19 offer that was first presented because I wanted my right to
20 a trial.

21 I returned to court throughout the year of 2012
22 and no witnesses ever showed up at those hearings. Nobody
23 ever showed up to present any evidence. Then sometime in
24 October the judge decided to just start handing out
25 significant jail time sentences to other people and since I

J. KLEIN

C E R T I F I C A T E

[illegible]

I, GARY MEROLA, a Notary Public for and within the
State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this
22nd day of August 2017.

Barry Menck

GARY MEROLA